

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
SEPTEMBER 5 AND 6, 2006**

**(FIRST AMENDED)**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom, located at 350 McAllister Street, Fourth Floor, San Francisco, California, on September 5 and 6, 2006.

**TUESDAY, SEPTEMBER 5, 2006—2:00 P.M.**

- (1) S122953 Barrett v. Rosenthal
- (2) S128442 People v. Wright (Shaun)

**WEDNESDAY, SEPTEMBER 6, 2006—10:00 A.M.**

- (3) S135263 In re Jaime P.  
*(to be called and continued to the October 2006 calendar)*
- (4) S133114 People v. Kelly (Gary Rogers)
- (5) S133331 Department of Alcoholic Beverage Control v. Alcoholic  
Beverage Control Appeals Board et al.

**1:30 P.M.**

- (6) S136690 TRB Investments, Inc. v. Fireman's Fund Ins. Co.
- (7) S133798 People v. Neidinger (William)

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**GEORGE**  
*Chief Justice*

If exhibits are to be transmitted to this court, counsel must comply with rule 18(c) of the California Rules of Court.

**SUPREME COURT OF CALIFORNIA  
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The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**TUESDAY, SEPTEMBER 5, 2006—2:00 P.M.**

***(1) Barrett v. Rosenthal, S122953***

#04-30 Barrett v. Rosenthal, S122953. (A096451; 114 Cal.App.4th 1379; Superior Court of Alameda County; 833021-5.) Petition for review after the Court of Appeal vacated in part and otherwise affirmed an order granting a special motion to strike. This case includes the following issues: (1) Does the Communications Decency Act (47 U.S.C. § 230) confer absolute immunity on an Internet “provider” or “user” who republishes statements made by third parties, or can liability still be imposed under traditional common law principles when the provider or user knows or has reason to know of the defamatory character of a statement it republished on the Internet? (2) What is the meaning of the term “user” under the act? (3) For purposes of the issue presented by this case, does it matter whether the “user” engaged in active or passive conduct?

***(2) People v. Wright (Shaun), S128442***

#04-137 People v. Wright (Shaun), S128442. (G031061; 121 Cal.App.4th 1356; Superior Court of Orange County; 01WF2416.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case includes the following issue: Does the Compassionate Use Act (Health & Saf. Code, § 11362.5) afford a defense to a charge of transporting, as well as possessing, marijuana, and if so, under what circumstances?

**WEDNESDAY, SEPTEMBER 6, 2006—10:00 A.M.**

***(3) In re Jaime P., S135263 (to be called and continued to the October 2006 calendar)***

#05-188 In re Jaime P., S135263. (A107686; unpublished opinion; Superior Court of Solano County; J32334.) Petition for review after the Court of Appeal remanded for recalculation of maximum commitment term, and otherwise affirmed. This case presents the following issue: Does the decision in *In re Tyrell J.* (1994) 8 Cal.4th 68, which held that the search of a juvenile may be justified by a probation search condition even if the officer conducting the search was not aware that the juvenile was subject to such a search condition, remain viable in light of the reasoning and holding of this court's subsequent decision in *People v. Sanders* (2003) 31 Cal.4th 318?

***(4) People v. Kelly (Gary Rogers), S133114***

#05-118 People v. Kelly (Gary Rogers), S133114. (H027483; unpublished opinion; Superior Court of Santa Clara County; CC320855.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Does article VI, section 14, of the California Constitution, which provides that “[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated,” set the same standard for a criminal appeal in which defense counsel files a brief under *People v. Wende* (1979) 25 Cal.3d 436 raising no issue and defendant submits written argument on his own behalf as the standard that applies to a criminal appeal in which one or more specific claims of error are raised by defense counsel? (2) Did the Court of Appeal opinion in this case satisfy the requirements of article VI, section 14?

***(5) Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board et al., S133331***

#05-149 Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board et al., S133331. (B177986; 127 Cal.App.4th 615.) Petition for review after the Court of Appeal affirmed decisions of the board. This case presents the following issue: Does due process require that the prosecutorial and adjudicative

functions of the Department of Alcoholic Beverage Control in liquor license disciplinary proceedings be entirely separate and shielded from one another?

**1:30 P.M.**

***(6) TRB Investments, Inc. v. Fireman’s Fund Ins. Co., S136690***

#05-196 TRB Investments, Inc. v. Fireman’s Fund Ins. Co., S136690. (F045816; 130 Cal.App.4th 1594; Superior Court of Kern County; 250247.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: When a property insurance policy excludes coverage for damages to a building that is vacant for more than 60 consecutive days except when the building is “under construction,” does the “under construction” clause apply to a building that is undergoing renovation or only to a building that is being newly constructed?

***(7) People v. Neidinger (William), S133798***

#05-150 People v. Neidinger (William), S133798. (C042839; 127 Cal.App.4th 1120; Superior Court of Yolo County; 02-1556.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case includes the following issue: For purposes of the offense of maliciously depriving another of lawful custody of a child (Pen. Code, § 278.5), is the defendant’s “good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm” (Pen. Code, § 278.7) an affirmative defense, or does it negate the element of malice, or, in an appropriate case, can it act in both capacities, obligating the trial court to instruct separately on each?